Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Further Inquiry Into Two Under-Developed Issues In The Open Internet Proceeding	)	GN Docket No. 09-191
	)	WC Docket No. 07-52
	)	

COMMENTS OF THE GSM ASSOCIATION

I. INTRODUCTION

The GSM Association ("GSMA") hereby submits these Comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice seeking further development of the record in its Open Internet Proceeding.[1] GSMA represents the interests of the worldwide mobile communications industry. Spanning 219 countries, GSMA unites nearly 800 of the world's mobile operators, as well as more than 200 companies in the broader mobile ecosystem, including handset makers, software companies, equipment providers, Internet companies, and media and entertainment organizations. GSMA's members represent approximately five billion mobile wireless connections using virtually all types of wireless technologies. GSMA's members provide mobile broadband to individuals and businesses wherever and whenever they want it—both in the United States and around the world. At its core, GSMA is focused on innovating, incubating, and creating new opportunities for people around the world to benefit from mobile communications.

GSMA applauds the Commission's recognition in the public notice that mobile networks "have unique characteristics related to technology, associated application and device markets,

[1] *See* Further Inquiry Into Two Under-Developed Issues In the Open Internet Proceeding, GN Docket No. 09-191, WC Docket No. 07-52, *Public Notice*, DA 10-1667, 75 Fed. Reg.55,297 (2010) ("Public Notice").

and consumer usage."[2] Indeed, as GSMA has previously explained to the Commission, while mobile broadband networks offer a unique transformational potential, the special technical and capacity constraints of wireless network engineering demand that network operators enjoy a level of flexibility that is inconsistent with the Commission's proposed "Open Internet" rules.[3] In addition to being ill-fit for mobile network, the Commission's proposed rules would be an unprecedented departure from the longstanding deregulatory principles of U.S. Internet policy. As such, adoption of the proposed rules could have significant consequences on the world stage that are likely unintended and unwanted by the Commission.

II. MOBILE BROADBAND NETWORK PRESENT UNIQUE OPPORTUNITIES AND CHALLENGES THAT ARE INCONSISTENT WITH THE PROPOSED RULES.

The Commission's proposed rules would reduce the abilities of network operators to reliably ensure the service quality expected by contemporary mobile broadband consumers. The spread of mobile broadband presents tremendous social and economic opportunities coupled with substantial technological challenges. To deliver a dependable, high-quality mobile broadband experience that will keep pace with consumer demand, wireless network operators require continued flexibility to remain proactive and innovative in their technical and contractual network management activities. The proposed rules are inconsistent with these needs.

The rise of the mobile Internet is a transformational event for our economy and culture on a local, national, and, especially global level. As the Commission noted in the National Broadband Plan, "[w]ireless broadband is poised to become a key platform for innovation in the United States," and mobile broadband in particular "promises to continue to be a significant

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[2] Public Notice at 2.

[3] *See, e.g.*, Comments of the GSM Association, GN Docket NO. 09-191, WC Docket No. 07-52 at 3-5, 13-26 (filed Jan. 14, 2010) ("GSMA Comments").

contributor to U.S. economic growth in the coming decade."[4] Yet the mobile broadband revolution will be even more significant on a global scale. Mobile broadband is often the only solution to the resource and infrastructure challenges of network deployment in developing nations. The effects of mobile broadband deployment in these areas will be particularly significant in terms of both economic and social/political advancement. It is estimated that bringing mobile broadband to developing economies could potentially increase GDP by $300-420 billion and create more than 10-14 million jobs, in addition to having a significant impact on overall societal welfare.[5] Thus, any new Internet regulations must be considered in light of their potential impacts around the world.

Mobile broadband adoption is on the rise. Estimates vary, but Morgan Stanley has predicted that by 2015 more people will connect to the Internet via mobile devices than desktop PCs,[6] and one survey of Internet experts predicted that by 2020 mobile phones will be the primary means of Internet access around the world.[7] Recent research conducted by the Pew Internet and American Life project indicates that 40% of American adults access the Internet using a mobile device—up from 32% in 2009.[8] And adoption of the mobile Internet is particularly pronounced among young adults and minorities.[9]

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4 Omnibus Broadband Initiative, Federal Communications Commission, *Connecting America: The National Broadband Plan* 75 (2010) ("National Broadband Plan").

5 Sören Buttkereit et al., McKinsey & Company, *Mobile Broadband for the Masses: Regulatory Levers to Make it Happen* (2009) *available at* http://www.gsmworld.com/documents/25032009113456.pdf.

6 *See* Mary Meeker et al., Morgan Stanley Research, *The Mobile Internet Report* 1 (2009).

7 *See* Lee Rainie & Janna Anderson, Pew Internet and American Life Project, *The Future of the Internet III* 5 (2008).

8 Aaron Smith, Pew Internet and America Life, *Mobile Access 2010* 2 (2010).

9 *Id.* at 3-5 (indicating that nearly two-thirds of African Americans and Latinos are mobile Internet users, while 65% of adults 18-29 years old access the Internet on their mobile devices).

As a direct and inevitable result of increased mobile broadband adoption, wireless networks are being made to accommodate ever-increasing amounts of traffic. The statistics are familiar to the Commission and important to the public. According to Cisco, North American wireless networks carried approximately 17 petabytes per month in 2009.[10] By 2014, Cisco anticipates that this number will increase by over 40 times, to 740 petabytes per month.[11] These increases in overall use translate into new strains being placed on the networks of commercial mobile broadband providers. In the U.S., AT&T has seen a 5000% growth in data usage over the past three years.[12] For an international perspective, 30% of Vodafone's European customers use their mobile devices regularly to access the Internet.[13] The company's data traffic volume has increased by 300% in the last two years and over two-thirds of the traffic carried on its networks is data.[14] Next generation mobile broadband interfaces and ongoing network build-outs promise to relieve some of the congestion created by the recent surge in usage, however without the continued ability to actively monitor and dynamically manage network activity,

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10 *See* "Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2009-2014," Cisco Systems, Inc., at 1 (Feb. 2010), *available at* http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf (*cited in* National Broadband Plan at 76-77).

11 *Id.*

12 Kristin Rinne, Senior Vice President Architecture and Planning, AT&T, Remarks at the Wireless Broadband Workshop at 5-6, 40 (Aug. 13, 2009) (transcript available at http://www.broadband.gov/docs/ws_06_tech_wireless_transcript.pdf). Similarly, T-Mobile USA reports that users of its G1 advanced handset use 50 times the data of the average T-Mobile customer. *Ex Parte* Letter from Kathleen O'Brien Ham, T-Mobile USA, to Marlene H. Dortch, Federal Communications Commission, GN Docket No. 09-51, WT Docket No. 06-150, PS Docket No. 06-229, WT Docket No. 05-265, WT Docket No. 00-193, WC Docket No. 05-25, at 9 (filed Aug. 6, 2009)

13 Michel Combes, Chief Executive Officer, Europe Region, Vodafone, "Building a Truly Sustainable Internet," remarks at iDATE conference (Nov. 18, 2009), *available at* http://www.vodafone.com/etc/medialib/attachments/external_conferences/2009.Par.37615.File.dat/m_combes_idate09.pdf.

14 *Id.*

some wireless network operators might be unable to provide the superior broadband user experience demanded by consumers.

Mobile broadband networks rely upon a shared spectrum resource to provide service to all users. To a much greater extent than with fixed service networks, mobile networks have limited capacities and are prone to highly localized spikes in congestion at specific times and places based upon social, cultural, economic, and other factors outside of the control of network operators. Moreover, the relationship between devices and the broadband network differs significantly between the mobile wireless and the fixed wireline contexts—mobile devices are fully functional integrated parts of the core network, not simply user interface devices residing at the network "edge." Wireless network operators require significant regulatory flexibility in designing technical and contractual means to manage the new demands on their networks.

The special characteristics of wireless networks make the proposed restrictions on network operators' abilities to dynamically manage network activity particularly inappropriate. As explained in more detail in GSMA's initial comments in this proceeding,[15] the proposed rules are both definitionally and conceptually incompatible with the realities of wireless network operation. Rather than targeting specific bad acts by wireless network operators—of which, no substantial examples have been offered in the nearly 12 months since the release of the Open Internet NPRM—the proposed rules would instead hamstring network operators' efforts to provide consumer-focused service and device optimization that users have come to expect and demand. Thus, applying the proposed rules to wireless networks would likely hurt the public by significantly degrading the mobile broadband user experience, while also not addressing any actual instances of anticompetitive conduct or harmful discrimination.

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15 *See* GSMA Comments at 17-26.

III. THE PROPOSED RULES COULD HAVE UNINTENDED INTERNATIONAL CONSEQUENCES.

The rise of the global Internet has been a success story of innovation, openness, and regulatory modesty in which the United States has long played a prominent and influential role. The U.S. has traditionally espoused a "hands-off" approach to regulating the Internet, and the proposed rules would be perceived as a significant political shift abroad. Moreover, the proposed rules would diverge significantly from international regulatory norms. Because of this, the rules may stimulate a significant increase in global regulation of the Internet.

As in the U.S., the mobile and broadband sectors have been major engines of investment and innovation around the world. For example, in its most recent *Communications Outlook* the Organization for Economic Co-operation and Development ("OECD") reported that mobile and broadband together accounted for 74% of all communications subscriptions in 2007—with mobile alone accounting for 61%—and these numbers continue to rise.[16] This recent growth has occurred in the midst of a regulatory culture of allowing the Internet ecosystem to develop competitively and organically, with a minimum of regulatory intervention.

The FCC has been a trendsetter in global communications policy and the U.S. is widely recognized as a global leader in wireless innovation. U.S. Internet policy is clearly articulated in the Telecommunications Act of 1996, which declare that "[i]t is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."[17] The

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16 *See* Organization for Economic Co-operation and Development, *OECD Communications Outlook 2009* 14 (rev. Aug 2009) *available at* http://browse.oecdbookshop.org/oecd/pdfs/browseit/9309031E.PDF.

17 *See* 47 U.S.C. § 230(b)(2); *see also* Preserving the Open Internet; Broadband Industry Practices, *Notice of Proposed Rulemaking*, GN Docket No. 09-191, WC Docket No. 07-52 24 FCC Rcd 13064, 13082 ¶ 47 (2009) ("*Open Internet NPRM*") ("[I]t has long been U.S. policy to promote an Internet that is both open and *unregulated*.") (emphasis added).

Commission's proposed Open Internet rules represent a significant departure from this well-established national policy. For the first time, the U.S. government, through the FCC, proposes to directly regulate how broadband network operators choose to treat the content that flows over their networks, and other business decisions.

The traditional hands-off approach of the United States government, based on an historical belief that the Internet should be free from prescriptive regulation, has been highly influential internationally and has helped spur technological innovation, economic growth, and social development throughout the world. As such, the proposed rules would be outliers on the international information and communication technologies ("ICT") scene. As explained in GSMA's Comments and Reply Comments, similar issues have been recently explored by regulators in the European Union, Japan, Hong Kong, Canada, and the United Kingdom, and in each case the government chose either to take a "wait-and-see" approach, to exempt mobile broadband networks from the scope of any new rules, or to adopt some regulations stopping far short of the extreme market intervention contemplated by the Commission.[18]

In light of the United States' traditional emphasis on free market solutions, and the unprecedented interventionism represented by the proposed rules, the Commission's actions regarding network neutrality are being closely monitored by regulators and governments internationally. In addition to possibly stimulating additional well-intentioned although overly restrictive regulation internationally,[19] U.S. abandonment of its time-honored Internet policy

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[18] *See* GSMA Comments at 11-12; Reply Comments of the GSM Association, GN Docketn No. 09-191, WC Docket No. 07-52 at 16-18 (filed Apr. 26, 2010).

[19] Although not directly responsive to the present Public Notice, GSMA notes that the Commission's recent proposal to reclassify broadband Internet connectivity as telecommunications might be interpreted internationally as an implicit endorsement of increased regulation of the Internet by the United Nations, through the International Telecommunication Union—a concept that the U.S. government has previously explicitly rejected. *See* Comments of the GSM Association, GN Docket No. 10-127 (filed July 15, 2010); Robert M. McDowell, *The*

could embolden other countries who might wish to restrict key freedoms online. Ambassador Phil Verveer, the U.S. Coordinator for International Communications and Information Policy recently noted:

> [T]he Network Neutrality proceeding has attracted extensive attention around the world. I think it is fair to say that the level of international interest is very nearly universal. In some countries it is being interpreted as an initiative by the United States to regulate the Internet. And we are concerned that in some countries it may be used as a justification for blocking access for purposes of preventing unwelcome political, social, or cultural information from being disseminated to their citizens.[20]

The Commission's choice to regulate private conduct on the Internet to achieve its social goal of openness, despite the lack of any evidence of real world harm, may encourage other governments to regulate more intrusively under the guise of promoting their own important national interest on the Internet. As Commissioner McDowell explained in a recent Wall Street Journal editorial, "State interference with the Web is spreading," and, unfortunately, "Government regulation of the Internet can often become politically motivated."[21] It would be a tragic irony if new Commission regulations, which are said to protect expression and information flow, provided the justification for other nations to regulate the Internet to achieve more repressive social policies or advantage parochial economic interests.

IV. CONCLUSION

The Commission's regulatory foresight and technical expertise have helped establish and maintain the United States as the vanguard of ICT innovation. In keeping with this tradition, the

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U.N. Threat to Internet Freedom, THE WALL STREET JOURNAL, July 22, 2010 *available at* http://online.wsj.com/article/SB10001424052748704684604575381571670766774.html.

[20] *See International Innovation and Broadband*, Remarks of Ambassador Philip L. Verveer, U.S. Coordinator for International Communications and Information Policy, at House of Sweden, Washington, D.C. (Dec. 3, 2009) *available at* http://www.state.gov/e/eeb/rls/rm/2009/133802.htm.

[21] McDowell, *supra* note 18.

Commission should now decline to apply any new "Open Internet" rules for application to mobile broadband networks. This is because mobile broadband presents special opportunities and challenges that make it uniquely unsuited for the sort of restrictive regulations proposed. Moreover, the Commission's proposed rules—particularly as applied to wireless—are outside of the international mainstream and could set a potentially dangerous precedent. As such, GSMA respectfully urges the Commission to exclude mobile broadband networks from any new regulations adopted through this proceeding.

Respectfully Submitted,

GSM ASSOCIATION

By: */s/*

Tom Phillips, Chief Government and Regulatory Affairs Officer
Adam Denton, Head of Regulatory Affairs
Robindhra Mangtani, Senior Director, Public Policy

GSM ASSOCIATION
7th Floor
5 New Street Square
London, UK
EC4A 3BF

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